

AMENDED IN SENATE SEPTEMBER 8, 2003

AMENDED IN SENATE AUGUST 29, 2003

AMENDED IN SENATE AUGUST 18, 2003

AMENDED IN SENATE JULY 3, 2003

AMENDED IN SENATE JUNE 16, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 747**

**Introduced by Assembly Members Matthews and La Malfa**  
*(Principal coauthor: Assembly Member Nakanishi)*  
*(Principal coauthor: Senator Figueroa)*

February 19, 2003

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An act to amend *Section 810 of the Business and Professions Code*, and to amend Sections 14105.48, 19356, and 19805 of the Welfare and Institutions Code, relating to human services.

### LEGISLATIVE COUNSEL'S DIGEST

AB 747, as amended, Matthews. Human services: Medi-Cal: durable medical equipment and hearing aids: independent living centers.

(1) ~~Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services, pursuant to which medical benefits are provided to public assistance recipients and certain other low-income persons. Existing law establishes the Department of Consumer Affairs that is comprised of various boards~~

*that license and regulate the profession under the board's jurisdiction. Existing law, by initiative statute, creates the Osteopathic Board of California and the State Board of Chiropractic Examiners with similar licensing and regulatory duties with respect to those professions.*

*Existing law authorizes a board to suspend or revoke a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.*

*Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services, pursuant to which health care benefits are provided to public assistance recipients and certain other low-income persons, including dental benefits under the Denti-Cal element of the Medi-Cal program. Under existing law, the Director of Health Services is required to suspend the participation in the Medi-Cal program by a provider of services for conviction of any felony or any misdemeanor involving fraud.*

*This bill would require specified boards within the department, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners to convene disciplinary hearings to revoke a license if the licensee has more than one conviction, as defined, for any felony involving Medi-Cal fraud committed by the licensee in conjunction with the Medi-Cal program or the Denti-Cal element of the Medi-Cal program, and would require revocation unless there are mitigating circumstances. Conviction of the 2nd felony arising out of separate prosecutions would result in automatic suspension of the license. The bill would apply to a licensee with one or more convictions prior to January 1, 2004, in a specified manner. The bill would additionally require these boards to convene disciplinary hearings to suspend or revoke a license if the licensee has one conviction, as defined, for any of the above activities.*

(2) Under existing law, durable medical equipment is a covered benefit under the Medi-Cal program, subject to utilization controls.

*This bill would revise the schedule of maximum allowable rates for durable medical equipment.*

Under existing law, the department may enter into exclusive or nonexclusive contracts on a bid or negotiated basis with manufacturers, distributors, dispensers, or suppliers of appliances, durable medical equipment, medical supplies, and other product-type health care services for the purpose of obtaining the most favorable prices to the state and to assure adequate quality of the product or service, with



certain exceptions. Existing law requires the department to establish a list of covered services and maximum allowable reimbursement rates for durable medical equipment.

This bill would authorize the department to require providers of durable medical equipment to appeal Medicare denials for dually eligible beneficiaries as a condition of Medi-Cal payment.

(2)

(3) *Existing law requires the Department of Rehabilitation to suspend for the 2003–04 fiscal year the biennial rate adjustment for certain work-activity programs.*

*This bill would require the department to suspend the biennial rate adjustment until July 1, 2006.*

(4) Existing law requires the Department of Rehabilitation to provide assistance and funding to independent living centers, which are nonprofit entities that provide services to individuals with disabilities. Existing law provides a formula for the allocation of funds appropriated by the Legislature to independent living centers.

Existing law authorizes the department to provide a funding advance in specified amounts to independent living centers that comply with certain accounting criteria established by the department.

This bill would authorize the department to provide a similar funding advance to any contractor or grantee receiving funds pursuant to the provisions governing independent living centers. The bill would require any grantee of a funding advance also to meet reporting criteria established by the department.

(5) *This bill would incorporate additional changes in Section 810 of the Business and Professions Code proposed by SB 359 that would become operative only if SB 359 and this bill are both enacted and become effective on or before January 1, 2004, and this bill is enacted last.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 810 of the Business and Professions*  
2 *Code is amended to read:*

3 810. (a) It shall constitute unprofessional conduct and  
4 grounds for disciplinary action, including suspension or  
5 revocation of a license or certificate, for a health care professional

1 to do any of the following in connection with his or her  
2 professional activities:

3 (1) Knowingly present or cause to be presented any false or  
4 fraudulent claim for the payment of a loss under a contract of  
5 insurance.

6 (2) Knowingly prepare, make, or subscribe any writing, with  
7 intent to present or use the same, or to allow it to be presented or  
8 used in support of any false or fraudulent claim.

9 (b) It shall constitute cause for revocation or suspension of a  
10 license or certificate for a health care professional to engage in any  
11 conduct prohibited under Section 1871.4 of the Insurance Code or  
12 Section 550 of the Penal Code.

13 (c) (1) *It shall constitute cause for automatic suspension of a*  
14 *license or certificate issued pursuant to Chapter 4 (commencing*  
15 *with Section 1600), Chapter 5 (commencing with Section 2000),*  
16 *Chapter 6.6 (commencing with Section 2900), Chapter 7*  
17 *(commencing with Section 3000), or Chapter 9 (commencing with*  
18 *Section 4000), or pursuant to the Chiropractic Act or the*  
19 *Osteopathic Act, if a licensee or certificate holder has been*  
20 *convicted of any felony involving Medi-Cal fraud committed by the*  
21 *licensee or certificate holder in conjunction with the Medi-Cal*  
22 *program, including the Denti-Cal element of the Medi-Cal*  
23 *program, pursuant to Chapter 7 (commencing with Section*  
24 *14000), or Chapter 8 (commencing with Section 14200), of Part*  
25 *3 of Division 9 of the Welfare and Institutions Code. The board*  
26 *shall convene a disciplinary hearing to determine whether or not*  
27 *the license or certificate shall be suspended, revoked, or some*  
28 *other disposition shall be considered, including, but not limited to,*  
29 *revocation with the opportunity to petition for reinstatement,*  
30 *suspension, or other limitations on the license or certificate as the*  
31 *board deems appropriate.*

32 (2) *It shall constitute cause for automatic suspension and for*  
33 *revocation of a license or certificate issued pursuant to Chapter 4*  
34 *(commencing with Section 1600), Chapter 5 (commencing with*  
35 *Section 2000), Chapter 6.6 (commencing with Section 2900),*  
36 *Chapter 7 (commencing with Section 3000), or Chapter 9*  
37 *(commencing with Section 4000), or pursuant to the Chiropractic*  
38 *Act or the Osteopathic Act, if a licensee or certificate holder has*  
39 *more than one conviction of any felony arising out of separate*  
40 *prosecutions involving Medi-Cal fraud committed by the licensee*

1 or certificate holder in conjunction with the Medi-Cal program,  
2 including the Denti-Cal element of the Medi-Cal program  
3 pursuant to Chapter 7 (commencing with Section 14000), or  
4 chapter 8 (commencing with Section 14200), of Part 3 of Division  
5 9 of the Welfare and Institutions Code. The board shall convene a  
6 disciplinary hearing to revoke the license or certificate and an  
7 order of revocation shall be issued unless the board finds  
8 mitigating circumstances to order some other disposition.

9 (3) It is the intent of the Legislature that paragraph (2) apply  
10 to a licensee or certificate holder who has one or more convictions  
11 prior to January 1, 2004, as provided in this subdivision.

12 (4) Nothing in this subdivision shall preclude a board from  
13 suspending or revoking a license or certificate pursuant to any  
14 other provision of law.

15 (5) "Board," as used in this subdivision, means the Dental  
16 Board of California, the Medical Board of California, the Board  
17 of Psychology, the State Board of Optometry, the California State  
18 Board of Pharmacy, the Osteopathic Medical Board of California,  
19 and the State Board of Chiropractic Examiners.

20 (6) "More than one conviction," as used in this subdivision,  
21 means that the licensee or certificate holder has one or more  
22 convictions prior to January 1, 2004, and at least one conviction  
23 on or after that date, or the licensee or certificate holder has two  
24 or more convictions on or after January 1, 2004. However, a  
25 licensee or certificate holder who has one or more convictions  
26 prior to January 1, 2004, but who has no convictions and is  
27 currently licensed or holds a certificate after that date, does not  
28 have "more than one conviction" for the purposes of this  
29 subdivision.

30 (d) As used in this section, health care professional means any  
31 person licensed or certified pursuant to this division, or licensed  
32 pursuant to the Osteopathic Initiative Act, or the Chiropractic  
33 Initiative Act.

34 SEC. 1.5. Section 810 of the Business and Professions Code  
35 is amended to read:

36 810. (a) It shall constitute unprofessional conduct and  
37 grounds for disciplinary action, including suspension or  
38 revocation of a license or certificate, for a health care professional  
39 to do any of the following in connection with his or her  
40 professional activities:

1 (1) Knowingly present or cause to be presented any false or  
2 fraudulent claim for the payment of a loss under a contract of  
3 insurance.

4 (2) Knowingly prepare, make, or subscribe any writing, with  
5 intent to present or use the same, or to allow it to be presented or  
6 used in support of any false or fraudulent claim.

7 (b) It shall constitute cause for revocation or suspension of a  
8 license or certificate for a health care professional to engage in any  
9 conduct prohibited under Section 1871.4 of the Insurance Code or  
10 Section 550 of the Penal Code.

11 (c) (1) *It shall constitute cause for automatic suspension of a*  
12 *license or certificate issued pursuant to Chapter 4 (commencing*  
13 *with Section 1600), Chapter 5 (commencing with Section 2000),*  
14 *Chapter 6.6 (commencing with Section 2900), Chapter 7*  
15 *(commencing with Section 3000), or Chapter 9 (commencing with*  
16 *Section 4000), or pursuant to the Chiropractic Act or the*  
17 *Osteopathic Act, if a licensee or certificate holder has been*  
18 *convicted of any felony involving fraud committed by the licensee*  
19 *or certificate holder in conjunction with providing benefits*  
20 *covered by worker's compensation insurance, or has been*  
21 *convicted of any felony involving Medi-Cal fraud committed by the*  
22 *licensee or certificate holder in conjunction with the Medi-Cal*  
23 *program, including the Denti-Cal element of the Medi-Cal*  
24 *program, pursuant to Chapter 7 (commencing with Section*  
25 *14000), or Chapter 8 (commencing with Section 14200), of Part*  
26 *3 of Division 9 of the Welfare and Institutions Code. The board*  
27 *shall convene a disciplinary hearing to determine whether or not*  
28 *the license or certificate shall be suspended, revoked, or some*  
29 *other disposition shall be considered, including, but not limited to,*  
30 *revocation with the opportunity to petition for reinstatement,*  
31 *suspension, or other limitations on the license or certificate as the*  
32 *board deems appropriate.*

33 (2) *It shall constitute cause for automatic suspension and for*  
34 *revocation of a license or certificate issued pursuant to Chapter 4*  
35 *(commencing with Section 1600), Chapter 5 (commencing with*  
36 *Section 2000), Chapter 6.6 (commencing with Section 2900),*  
37 *Chapter 7 (commencing with Section 3000), or Chapter 9*  
38 *(commencing with Section 4000), or pursuant to the Chiropractic*  
39 *Act or the Osteopathic Act, if a licensee or certificate holder has*  
40 *more than one conviction of any felony arising out of separate*

1 *prosecutions involving fraud committed by the licensee or*  
2 *certificate holder in conjunction with providing benefits covered*  
3 *by worker's compensation insurance, or in conjunction with the*  
4 *Medi-Cal program, including the Denti-Cal element of the*  
5 *Medi-Cal program pursuant to Chapter 7 (commencing with*  
6 *Section 14000), or Chapter 8 (commencing with Section 14200),*  
7 *of Part 3 of Division 9 of the Welfare and Institutions Code. The*  
8 *board shall convene a disciplinary hearing to revoke the license or*  
9 *certificate and an order of revocation shall be issued unless the*  
10 *board finds mitigating circumstances to order some other*  
11 *disposition.*

12 *(3) It is the intent of the Legislature that paragraph (2) apply*  
13 *to a licensee or certificate holder who has one or more convictions*  
14 *prior to January 1, 2004, as provided in this subdivision.*

15 *(4) Nothing in this subdivision shall preclude a board from*  
16 *suspending or revoking a license or certificate pursuant to any*  
17 *other provision of law.*

18 *(5) "Board," as used in this subdivision, means the Dental*  
19 *Board of California, the Medical Board of California, the Board*  
20 *of Psychology, the State Board of Optometry, the California State*  
21 *Board of Pharmacy, the Osteopathic Medical Board of California,*  
22 *and the State Board of Chiropractic Examiners.*

23 *(6) "More than one conviction," as used in this subdivision,*  
24 *means that the licensee or certificate holder has one or more*  
25 *convictions prior to January 1, 2004, and at least one conviction*  
26 *on or after that date, or the licensee or certificate holder has two*  
27 *or more convictions on or after January 1, 2004. However, a*  
28 *licensee or certificate holder who has one or more convictions*  
29 *prior to January 1, 2004, but who has no convictions and is*  
30 *currently licensed or holds a certificate after that date, does not*  
31 *have "more than one conviction" for the purposes of this*  
32 *subdivision.*

33 *(d) As used in this section, health care professional means any*  
34 *person licensed or certified pursuant to this division, or licensed*  
35 *pursuant to the Osteopathic Initiative Act, or the Chiropractic*  
36 *Initiative Act.*

37 *SEC. 2. Section 14105.48 of the Welfare and Institutions*  
38 *Code is amended to read:*

39 *14105.48. (a) The department shall establish a list of covered*  
40 *services and maximum allowable reimbursement rates for durable*

1 medical equipment as defined in Section 51160 of Title 22 of the  
2 California Code of Regulations and the list shall be published in  
3 provider manuals. The list shall specify utilization controls to be  
4 applied to each type of durable medical equipment.

5 (b) Reimbursement for durable medical equipment, except  
6 wheelchairs and wheelchair accessories, shall be the lesser of (1)  
7 the amount billed pursuant to Section 51008.1 of Title 22 of the  
8 California Code of Regulations, or (2) an amount that does not  
9 exceed 80 percent of the lowest maximum allowance for  
10 California established by the federal Medicare program for the  
11 same or similar item or service, or (3) the guaranteed acquisition  
12 cost negotiated by means of the contracting process provided for  
13 pursuant to Section 14105.3 plus a percentage markup to be  
14 established by the department.

15 (c) Reimbursement for wheelchairs and wheelchair accessories  
16 shall be the lesser of (1) the amount billed pursuant to Section  
17 51008.1 of Title 22 of the California Code of Regulations, or (2)  
18 an amount that does not exceed 100 percent of the lowest  
19 maximum allowance for California established by the federal  
20 Medicare program for the same or similar item or service, or (3)  
21 the guaranteed acquisition cost negotiated by means of the  
22 contracting process provided for pursuant to Section 14105.3 plus  
23 a percentage markup to be established by the department.

24 (d) Reimbursement for all durable medical equipment billed to  
25 the Medi-Cal program utilizing codes with no specified maximum  
26 allowable rate shall be the lesser of (1) the amount billed pursuant  
27 to Section 51008.1 of Title 22 of the California Code of  
28 Regulations, or (2) the guaranteed acquisition cost negotiated by  
29 means of the contracting process provided for pursuant to Section  
30 14105.3 plus a percentage markup to be established by the  
31 department, or (3) the actual acquisition cost plus a markup to be  
32 established by the department, or (4) ~~80 percent of the~~  
33 manufacturer's suggested retail purchase price *reduced by a*  
34 *percentage discount not to exceed 20 percent*, or (5) a price  
35 established through targeted product-specific cost containment  
36 provisions developed with providers.

37 (e) Reimbursement for all durable medical equipment supplies  
38 and accessories billed to the Medi-Cal program shall be the lesser  
39 of (1) the amount billed pursuant to Section 51008.1 of Title 22 of



1 the California Code of Regulations, or (2) the acquisition cost plus  
2 a 23 percent markup.

3 (f) Any regulation in Division 3 of Title 22 of the California  
4 Code of Regulations that contains provisions for reimbursement  
5 rates for durable medical equipment shall be amended or repealed  
6 effective for dates of service on or after the date of the act adding  
7 this section.

8 (g) Notwithstanding Chapter 3.5 (commencing with Section  
9 11340) of Part 1 of Division 3 of the Government Code, actions  
10 under this section shall not be subject to the Administrative  
11 Procedure Act or to the review and approval of the Office of  
12 Administrative Law.

13 (h) The department shall consult with interested parties and  
14 appropriate stakeholders in implementing this section with respect  
15 to all of the following:

16 (1) Notifying the provider representatives of the proposed  
17 change.

18 (2) Scheduling at least one meeting to discuss the change.

19 (3) Allowing for written input regarding the change.

20 (4) Providing advance notice on the implementation and  
21 effective date of the change.

22 (i) The department may require providers of durable medical  
23 equipment to appeal Medicare denials for dually eligible  
24 beneficiaries as a condition of Medi-Cal payment.

25 ~~SEC. 2.~~

26 *SEC. 3. Section 19356 of the Welfare and Institutions Code is*  
27 *amended to read:*

28 19356. (a) The department shall adopt regulations to  
29 establish rates for work-activity program services subject to the  
30 approval of the Department of Finance. The regulations shall  
31 provide for an equitable ratesetting procedure in which each  
32 specific allowable service, activity, and provider administrative  
33 cost comprising an overall habilitation service, as determined by  
34 the department, reflects the reasonable cost of service. Reasonable  
35 costs shall be determined biennially by the department, subject to  
36 audit at the discretion of the department.

37 (b) It is the intent of the Legislature that, commencing July 1,  
38 1996, the department establish rates for both habilitation services  
39 and vocational rehabilitation work-activity programs pursuant to  
40 subdivision (a). Nothing in this subdivision shall preclude the

1 subsequent amendment or adoption of regulations pursuant to  
2 subdivision (a).

3 ~~(c) For the 2003-04 fiscal year, notwithstanding~~  
4 *Notwithstanding* any other provision of law, the department shall  
5 ~~suspend for one year, until July 1, 2006,~~ the biennial rate  
6 adjustment for work-activity programs.

7 (d) Commencing July 1, 2003, the rates paid to work-activity  
8 programs pursuant to this section shall be reduced by 5 percent.

9 *SEC. 4.* Section 19805 of the Welfare and Institutions Code is  
10 amended to read:

11 19805. (a) The Department of Rehabilitation may advance to  
12 an independent living center an amount, each month, not in excess  
13 of one-twelfth of the annual allocation for the independent living  
14 center.

15 (b) The Department of Rehabilitation may advance to any  
16 contractor or grantee receiving funds pursuant to this chapter an  
17 amount, each month, not in excess of one-twelfth of the annual  
18 allocation for the contractor or grantee.

19 (c) To obtain approval by the department for a funding advance  
20 pursuant to this section, a grantee of a funding advance shall meet  
21 accounting and reporting criteria established by the Department of  
22 Rehabilitation.

23 *SEC. 5. Section 1.5 of this bill incorporates amendments to*  
24 *Section 810 of the Business and Professions Code proposed by*  
25 *both this bill and SB 359. It shall only become operative if (1) both*  
26 *bills are enacted and become effective on or before January 1,*  
27 *2004, (2) each bill amends Section 810 of the Business and*  
28 *Professions Code, and (3) this bill is enacted after SB 359, in which*  
29 *case Section 1 of this bill shall not become operative.*

